IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5498 OF 2005

Madhukar Namdeo Potkule ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.M.S.Mohite for the Applicant
Mr.R.Y.Mirza,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 31,2005

P.C.:

1. Heard learned Counsel for the Applicant and the learned A.P.P. for State. This application for grant of bail is by accused No.4 who is facing prosecution for offence punishable under sections 302, 120-B, 201 read with Section 34 of the Indian Penal Code.

2. The learned Counsel for the Applicant submitted that the entire case of the prosecution is based on extra judicial confession of the co-accused. Placing reliance on the decision of the Apex Court reported in (1998) 7 S.C.C. page No.337 (Suresh Budharmal Kalani Vs. State of Maharashtra), he submitted there is no possibility of convicting the applicant on the basis of alleged extra judicial confession of the co-accused. The learned A.P.P. has produced for my perusal relevant material and submitted that no case is made out for enlarging the Applicant on bail.

3. I have considered the submissions. The only material available against the Applicant is the statement of one Sushil Gorde. According to the prosecution, this statement records extra judicial confession. All that the said witness has stated is that two accused persons Amol and Dattatraya in his presence met a person with a beard and later on the said two accused informed the witness that the person with the beard was the Applicant who had agreed to pay Rs.50,000/- to the said two accused for committing the offence of murder of the deceased and the said two accused have committed murder.

4. Apart from legal submissions made by the learned Counsel for the Applicant, it is apparent from the statement of the witness that he was personally not knowing the Applicant earlier and he identified the Applicant at the police station. For the incident of 1st February 2005 the statement has been recorded on 6th February 2005. There is no test identification parade held.

5. There is no dispute between the parties that the statement of the said witness is the only evidence available against the Applicant. In view of the discussion made above and the law laid down by the Apex Court in the aforesaid decision, the applicant is entitled to be enlarged on bail. Investigation is completed and the charge sheet has been already filed.

6. Hence I pass the following order :

i) The Applicant shall be enlarged on bail in connection with C.R.No.42 of 2005 registered at Chaturshrungi Police Station, Pune subject to furnishing a personal bond of Rs.15,000/- (Rupees fifteen thousand only) with one or two local sureties in the like amount.

ii) Bail is granted subject to the condition that the Applicant will report to the concerned Police station once in a week till the conclusion of trial.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iv) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) Parties to act upon an authenticated copy of this order.

JUDGE